THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO.21539 of 2004

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Dated:11.08.2005

Between:

M/s.Sri Jai Hind Talkies, Governorpet,

Vijayawada, Krishna District, represented

By its Partner, V.Venkata Rao.

..... PETITIONER

AND

1 Government of Andhra Pradesh, represented

by its Principal Secretary, Home Department,

Secretariat Buildings, Hyderabad and another.

.....RESPONDENTS

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ORDER:

The petitioner is a cinema theatre. It assails the orders of the first respondent in G.O.Rt.No.1702, dated 18.11.2004. Be it noted, the first respondent passed the said orders purporting to exercise their powers under Section 10(4) of the A.P.Cinemas (Regulations) Act, 1955 (for short 'the Act'). Be it also noted that while rejecting the appeal filed by the petitioner, the Government confirmed the orders of the Joint Collector refusing to grant construction permission for the theatre.

This case has chequered history. It is, however, not necessary to go into the details elaborately. Suffice to mention that the petitioner theatre constructed long long ago, became defunct for various reasons. Sometime in 2002 the firm, managing the theatre, approached the Vijayawada Municipal Corporation for construction of the theatre and shopping complex. By order dated 11.01.2002, the Municipal Corporation issued No Objection Certificate, which was subsequently withdrawn on 28.12.2002. In the meanwhile, it appears the petitioner constructed the shopping

complex and theatre, and then approached the Joint Collector, the second respondent herein, for No Objection Certificate under the provisions of the Act and the A.P.Cinemas (Regulations) Rules, 1970 (for short 'the Rules'). The Joint Collector rejected such No Objection Certificate. The appeal was filed before the Government under Section 10(4) of the Act. The Government called for the remarks of District Collector and based on the remarks, rejected the appeal on the ground that any relaxation might jeopardize public safety.

The Government order is challenged, *inter alia,* on the ground that the same is violative of principles of natural justice. Attempting to sustain the impugned order a submission is made by the learned Assistant Government Pleader for Home that in the scheme of things under Section 10(4) of the Act read with Rule 18 of the Rules, there is no requirement in law to issue notice to the appellant before passing any order under Section 10(4) of the Act. A submission was also made that in all these matters the Government is issuing notices to the appellant or to authorized representative of the appellant. Therefore, this Court directed the learned Assistant Government Pleader to produce the records. Accordingly, the record is produced. Curiously, though a statutory right of the person conferred by the Act and Rules is involved, no such notice was issued to the petitioner or his authorized representative before rejecting the appeal. Therefore, this Court requested the learned Advocate General for the State to appear in this case.

The learned Advocate General appeared before this Court. He does not dispute the legal position that whenever the State action results in civil consequences, the rule of *audi alteram partem* must be complied with. Indeed, it is brought to the notice of this Court that the Government while exercising their appellate powers under Section 10(4) of the Act is adhering to principles of natural justice in some cases. This is also not denied by the learned Assistant Government Pleader. This only shows that the Government resorting to issuing notices to appellants before it under on selective basis without following a uniform procedure of issuing notice to the appellant or authorized representative, giving an opportunity of being heard and hearing the appellant. It would be less arbitrary if the procedure for issuing notice is evolved as expeditiously as possible. In this regard the Government may have to take necessary steps.

Insofar as this case is concerned this Court is convinced that having regard to the background of the case the Government ought to have issued a notice to the appellant before disposing of/rejecting the appeal filed by the petitioner, if the appellate authority gives a disposal to the appeal without hearing the appellant, the remedy of appeal would be rendered futile.

The writ petition, for the above reasons, is allowed. The impugned order is set aside and the matter is remitted to the first respondent with a direction to issue notice to the petitioner or its authorized representative and dispose of the appeal after hearing the appellant, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

(V.V.S.RAO, J)

11.08.2005

Note: Issue C.C by 16.08.2005.

B/o.

vs